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BEFORE THE
SURFACE TRANSPORTATION BOARD

CANEXUS CHEMICALS CANADA L.P.,

Complainant,

v.

BNSF RAILWAY COMPANY,

Defendant.

ENTERED
Office of Proceedings

DEC 5 -- 2011

Part of
Public Record

Docket No. 42131

Finance Docket No. 35524

UNION PACIFIC RAILROAD COMPANY'S
REBUTTAL STATEMENT

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December 5, 2011

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CANEXUS CHEMICALS CANADA L.P.,)	
)	
Complainant,)	
)	
v.)	Docket No. 42131
)	Finance Docket No. 35524
BNSF RAILWAY COMPANY,)	
)	
Defendant.)	
)	

Union Pacific Railroad Company ("UP") hereby submits its rebuttal statement in accordance with the Board's order served October 14, 2011, as clarified by the Board's decision served November 1, 2011.

BNSF claims this case is also about the right of rail carriers to control the routing of chlorine and other TIH commodities, but that right is not at issue here. UP agrees with BNSF

that shippers should not be allowed “to override railroad routing decisions” involving TIH commodities based on their “commercial interests.” (*Id.* at 20.) UP would vigorously oppose any efforts to give shippers control of routing decisions, especially in situations involving TIH commodities. However, *UP* believes a route via a Kansas City interchange is appropriate in this case. BNSF offers no facts showing that routes via Portland or Spokane interchanges would be safer or more efficient than a route via a Kansas City interchange. Indeed, the record shows that BNSF was willing to transport Canexus’s chlorine to Kansas City for interchange with UP until very recently, and BNSF apparently remains willing to transport Canexus’s chlorine to Kansas City for interchange with other carriers. In short, BNSF’s desired outcome appears unrelated to any effort to reduce the overall risks or costs of transporting TIH commodities; instead, it appears to reflect an effort to shift the risks and costs to UP.

Under Board precedent, UP is not required to accede to BNSF’s demand to interchange Canexus’s traffic in Portland or Spokane, rather than in Kansas City. “[A]bsent an agreement between the carriers,” the Board must determine an appropriate interchange based on factors that include “a comparison of the physical and operational feasibility of interchange at the points selected by the carriers,” the existence of a “shipper-carrier contract for service” for one of the segments at issue, and the “efficiency of the entire origin-to-destination service using each of the chosen interchange points.” *Central Power & Light Co. v. Southern Pac. Transp. Co.*, 2 S.T.B. 235, 244 & n.13.

BNSF erroneously claims there “is no basis in the record for concluding that Kansas City is superior to either Portland or Spokane as interchange locations for Canexus’s chlorine.” (Reply at 13.) In fact, undisputed evidence establishes that Kansas City is the most

appropriate interchange location and that a BNSF-UP routing via Kansas City will provide efficient origin-to-destination service for Canexus's chlorine.

First, BNSF voluntarily established a Kansas City interchange with UP for Canexus's chlorine traffic, which demonstrates that the interchange location is feasible and that the routing is reasonably efficient. *Cf. FMC Wyo. Corp. v. Union Pac. R.R.*, 2 S.T.B. 766, 772 n.12 (1997). BNSF concedes that "the interchange of Canexus's traffic at Kansas City is feasible and at least reasonably efficient." (Reply at 13.) BNSF tries to minimize the significance of that concession by stating that, "prior to March 2011, [it] had not historically interchanged Canexus' chlorine traffic with UP at Kansas City" prior to March 2011 (*id.*), but it does not dispute that it had voluntarily established tariff rates for handling Canexus's chlorine traffic using a Kansas City interchange long before this case arose (Complaint ¶ 9).¹

Second, BNSF does not dispute UP's evidence that Kansas City is used far more frequently than Portland to interchange traffic moving from BNSF-served origins in the Pacific Northwest to UP-served destination in eastern Texas, Arkansas, or Illinois – *i.e.*, the origin and destination regions at issue in this case. (UP Op. at 4-5.) As UP showed, Kansas City was the fourth most commonly used interchange, after Chicago, Denver, and Memphis. Portland was used just 0.1% of the time, and Spokane was never used. (*Id.* at 5.)

Third, BNSF does not dispute that its tariff governing transportation of chlorine shows that it remains willing to interchange chlorine moving from other origins at Kansas City. (*Id.* & n.3) BNSF also does not dispute that, unlike the situation in Spokane, where BNSF

¹ UP is uncertain what BNSF means when it claims that it had not "historically" interchanged Canexus's chlorine traffic with UP in Kansas City "prior to March 2011." UP traffic records show that UP and BNSF interchanged several cars of Canexus's chlorine in Kansas City in January and February, 2011.

requires notice before it will even begin to interchange chlorine, BNSF has not imposed any preconditions on the interchange of chlorine with UP at Kansas City. (*Id.* & n.4)

Fourth, the existence of a contract between Canexus and UP providing for a Kansas City interchange also weighs in favor of a Kansas City interchange, especially because it was negotiated against a background in which BNSF had an established tariff rate that applied to movements of Canexus's chlorine to an interchange with UP in Kansas City.²

By contrast, BNSF offers the Board no evidence from which it could conclude that Canexus's traffic should be routed via Portland or Spokane rather than Kansas City. BNSF asserts in the introduction of its reply that "[i]nterchanges at Portland or Spokane would be at least as efficient as an interchange at Kansas City." (Reply at 2.) However, BNSF never provides any evidence to support its claim.

BNSF states that "BNSF and UP have interchanged Canexus's chlorine at Portland in the past." (Reply at 13.) But BNSF acknowledges that the traffic interchanged at Portland moved to destinations in California (*id.* at 2), so the use of a Portland interchange for that traffic provides no relevant information about the relevant safety or efficiency of the routes at issue in this case. And BNSF does not even pretend it has shown Spokane to be a viable interchange for the traffic at issue. BNSF acknowledges it would require notice before a

² UP does not agree with Canexus's argument that the existence of its contract with Canexus requires BNSF to establish rates to a Kansas City interchange. Canexus relies on the Board's decision in *FMC Wyoming*. But that case involved the *form* of the common carrier rate that UP was required to quote to an interchange location *that was not in dispute*. See *FMC Wyoming*, 2 S.T.B. at 772 n.12. It did not involve a situation in which a contract with one carrier was being invoked to force another carrier to handle traffic on a route or to an interchange that the carrier believed was inappropriate. However, the existence of a contract has some relevance in that it shows that UP considered Kansas City to be a feasible interchange point and that Canexus believed the route would meet its commercial needs.

Spokane interchange could even be used, “to ensure that all safety and security rules will be met.” (*Id.* at 13.)

Ultimately, BNSF’s only argument in favor of interchanging Canexus’s chlorine in Portland and Spokane is that those two locations are consistent with its unilaterally developed “framework” for handling Canexus’s chlorine. (Reply at 14-15.) But BNSF never offers a good reason why its framework, which Canexus plainly did not accept, and which it never shared with UP, should be entitled to any weight in this case.³ BNSF claims that its approach represents a fair method of allocating the risks of handling Canexus’s chlorine among the rail carriers involved, but BNSF undermines its claim of fairness by making clear that its framework applies only to Canexus’s chlorine. (Reply at 14-15.) Moreover, even if it were applied evenhandedly to all similar disputes, BNSF’s framework appears unlikely to produce outcomes that comport with the regulatory and public policy objectives of providing safe, efficient transportation for chlorine and other TIH commodities. BNSF’s framework is mechanical and simplistic – it allows for no consideration of the many complex factors involved in assessing the risks and costs of transporting TIH and fairly allocating those risks and costs among rail carriers.⁴

³ BNSF expresses concern that a shipper and a railroad might determine the routing of interline shipments through “back room deals.” (*Id.* at 3.) Here, however, UP and Canexus negotiated their contract at a time when BNSF had tariff rates that provided for a Kansas City interchange. Moreover, Canexus’s apparently told BNSF that it was negotiating a contract with UP involving an interchange in Kansas City. *See* Complaint ¶ 11; Canexus Chemicals Canada L.P.’s Reply to BNSF’s Response To The Board’s Order of June 8, 2011 Regarding Its Legal Position, Verified Statement of Martin W. Cove at 3 (filed June 20, 2011). By contrast, UP did not learn about the “framework” that BNSF is trying to impose until BNSF described it in its June 15 submission in this proceeding. *See* BNSF Railway Company’s Response To The Board’s Order Of June 8, 2011 Regarding Its Legal Position, Verified Statement of David L. Garin at 6-7 (filed June 15, 2011).

⁴ In particular, BNSF’s framework makes no attempt to account for the relative risks associated with transporting TIH commodities over the different routes that the different carriers would have to use.

BNSF also claims that its framework is “consistent with” the statutory provision that gives a “reasonable preference” in routing to the “rail carrier originating the traffic.” (Reply at 15; 49 U.S.C. § 10705(a)(2).) But this is just another assertion that BNSF should get its way. The statutory “reasonable preference” is just one factor the Board must weigh when it prescribes through routes, and BNSF never explains why, even assuming it is entitled to a “reasonable preference,” its interest in shorthauling Canexus’s chlorine should outweigh the many other factors that clearly favor an interchange in Kansas City.⁵

Finally, BNSF claims that the Board should adopt its framework because it would be less complicated than a fact-specific analysis of the alternate interchanges and routes. (Reply at 14.) UP believes the need for Board intervention in these matters will be rare. As the lack of precedent demonstrates, rail carriers usually resolve these matters on their own. However, when carriers cannot agree on their own, the Board must reach a decision based on the record that the parties develop. In this case, the record plainly supports an interchange in Kansas City.

UP continues to believe it is important to address in a systematic way the many issues arising from the uncoordinated legislative and regulatory actions affecting transportation of TIH commodities, and that the Board should take a leadership role in this process. But this case is not an appropriate forum for making broad policy pronouncements. This case requires the Board to resolve a dispute over the interchange point for Canexus’s chlorine traffic, and nothing more. Based on the existing record, the Board should order BNSF to interchange Canexus’s chlorine with UP in Kansas City.

⁵ As BNSF acknowledges, it “is in reality a bridge carrier and not the originating carrier.” (Reply at 15.)

Respectfully submitted,

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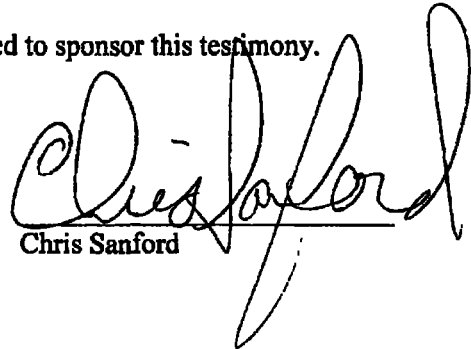
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December 5, 2011

**VERIFICATION
OF
CHRIS SANFORD**

I, Chris Sanford, Senior Manager, Interline Marketing for Union Pacific Railroad Company, declare under penalty of perjury that I have read Union Pacific Railroad Company's Rebuttal Statement and that the statement in footnote 1 on page 4 regarding Canexus's chlorine traffic interchanged by BNSF Railway Company and Union Pacific in Kansas City is true and correct. Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed on December 5, 2011.


Chris Sanford


CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2011, I caused a copy of the foregoing document to be served by email and by first-class mail, postage prepaid, on:

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